UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

EMERGENT HEALTH PARTNERS

Employer

and

EMILY A. KIDD, an Individual

Petitioner

Case 07-RD-270911

and

INTERNATIONAL ASSOCIATION OF EMTS AND PARAMEDICS (IAEP), NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES (NAGE), SEIU LOCAL 5000

Union

DECISION AND DIRECTION OF ELECTION

On a petition duly filed under Section 9(c) of the National Labor Relations Act ("Act"), a hearing on this petition was conducted before a hearing officer of the National Labor Relations Board ("Board") on the sole issue of whether a collective-bargaining contract exists that would bar processing this petition.

The Employer is engaged in emergency and non-emergency ambulance and medical transportation services throughout southern Michigan. Petitioner seeks to decertify the Union as the collective-bargaining representative of employees in a unit of emergency medical technicians and paramedics at various Employer facilities throughout Michigan.[1] The Union contends that documents exchanged with the Employer in November 2020, satisfy the Board's contract-bar requirements and the petition should be dismissed while the Employer asserts that there is no contract bar and an election should proceed.[2] Specifically, the Employer maintains the parties'

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[1] The following unit of the Employer's employees was certified on February 11, 2019, in Case 07-RC-231720:

> All full-time and regular part-time Emergency Medical Technicians (EMTs) and Paramedics (EMT-Ps) employed by the Employer at its Battle Creek, Coldwater, Mendon, Sturgis, Cassopolis, White Pigeon, Richland, and Sherwood (also known as Matteson Township substation), Michigan facilities; but excluding dispatchers, instructors, wheelchair drivers, administrative professionals, human resources employees, community relations employees, communications liaisons, scheduling specialists, administrative assistants, office clerical employees, professional employees, and guards and supervisors as defined in the Act.

[2] Pursuant to Sec. 102.66(d) of the Board's Rules and Regulations, Petitioner was precluded from presenting any evidence relating to a contract bar, cross-examining any witness concerning a contract bar, or presenting arguments concerning a contract bar because she failed to file a responsive statement of position. See also, Sec. 102.63(b)(3)(ii). Inasmuch as the hearing officer treated Petitioner's on-the-record statements regarding the employee ratification vote as an offer of proof, it is rejected. However, I note the statements dealt with the internal union ratification vote and that such a ratification vote was not a condition precedent to the parties' agreement. Therefore, even had the offer of proof been accepted, it would have no bearing on my decision.

contract lacks the requisite signatures, substantial terms and conditions of employment, and an effective date and an expiration date.

I. DECISION

As explained below, based on the record and relevant Board law, I find that the Union failed to sustain its burden to establish that the parties signed a document or documents containing substantial terms and conditions of employment for the bargaining unit prior to the filing of the instant decertification petition that would bar processing of this petition. Accordingly, because there is no contract bar to this petition, I direct and order an election as set forth below.

II. STATEMENT OF FACTS

The pertinent facts are not in dispute. Following a Board-conducted election, the Union was certified on February 11, 2019, as the exclusive collective-bargaining representative of the Employer's emergency medical technicians ("EMTs") and paramedics ("EMT-Ps") in various facilities throughout Michigan.

The Employer and Union began bargaining for an initial collective-bargaining agreement around August 2019, initially conducting in-person meetings and exchanging paper proposals and signing tentative agreements ("TAs") at the bargaining table. Due to the COVID-19 pandemic, the parties later transitioned negotiations online to Zoom videoconference sessions and the parties exchanged electronic proposals by email. The parties held their final bargaining session on November 2, 2020.[3]

On November 10, 2020, Employer lead negotiator Russell Linden emailed copies of all TAs, memos specifically listing the noneconomic and economic TAs, and a wage table setting wage increases for each step to Union lead negotiator Richard Anderson and Union Midwest States representative Kennard Skaggs. The email also noted that Linden would send a letter of understanding concerning temporary assignments the following day.

The Preamble of the TA begins:

> This Agreement is entered into by and between the INTERNATIONAL ASSOCIATION OF EMTs & PARAMEDICS (hereinafter referred to as "Union") and EMERGENT HEALTH PARTNERS – SOUTHWEST REGION (hereinafter referred to as "Employer").

Article 1 of that TA (Recognition, Section 1 – Scope of Agreement) cited to the certification of representative in Case 31-RC-7179, but quoted the appropriate unit description from the

[3] The record contains seven signed TAs but no correspondence or evidence showing acceptance of those or any other TAs sent by the Employer on November 10.

certification of representative in Case 07-RC-231720.[4] In his testimony, Skaggs referred to this as a scrivener's error. Article 20 of the TA (Duration & Termination) stated, in relevant part:

> Section 1. This Agreement shall be in full force and effect from DATE through DATE and thereafter for periods of one year unless written notice of a contrary intention is given by either party to the other in accordance with the provisions of Section 2 of this Article.
>
> Section 2. At least sixty (60), but not more than ninety (90) days prior to DATE, either party may give the other party written notice of its intention to negotiate the terms and conditions of a new agreement …

The signature blocks in Article 20 are blank and do not name either party. There is no evidence the Union replied or responded to the Employer's November 10 email.

On November 11, 2020, Linden emailed Anderson and Skaggs the letter of understanding as promised the previous day and inquired about the date of the Union's ratification vote. After hearing no response, on November 13, 2020, Linden reiterated his request for information about ratification. Skaggs responded: "Hopefully very soon, given the fact that COVID-19 cases are increasing and everyone is working remotely we're trying to get eyes on the clean copy before we post it." The Union did not mention the letter of understanding or express its acceptance.

Shortly thereafter, Skaggs cut-and-pasted all the November 10, 2020, TAs, as sent by Linden, into a 36-page "clean copy" of the tentative collective-bargaining agreement. The cover states:

AGREEMENT
BETWEEN
EMERGENT HEALTH PARTNERS
d/b/a LifeCare Ambulance
AND
INTERNATIONAL ASSOCIATION OF EMTs
AND PARAMEDICS, LOCAL R7-919, NAGE-SEUI
NLRB CASE NO.
07-RC-231720
EFFECTIVE – *UPON RATIFICATION*
THROUGH – _____, 2023

[4] The TA'd Section 1 in its entirety states:

> The Employer recognizes the Union as the exclusive bargaining agent for all employees in the following job classifications as set forth in the National Labor Relations Board certification of representative in NLRB Case No. 31-RC-7179: all full-time and regular part-time Emergency Medical Technicians (EMTs) and Paramedics (EMT-Ps), employed by the Employer at its Battle Creek, Coldwater, Mendon, Sturgis, White Pigeon, Richland, and Sherwood (also known as Matteson Township substation) Michigan facilities. Classifications excluded from the bargaining unit but are not limited to the following are dispatchers, instructors, wheelchair drivers, administrative professionals, human resources employees, community relations employees, communications liaisons, scheduling specialists, administrative assistants, office clerical employees, professional employees, guards and supervisor as defined by the National Labor Relations Act.

The document also contained the same language from the Preamble; Article 1, Section 1; Article 20, Sections 1 and 2; and blank signature lines. It also contained placeholders for the wage scale ("NOTE: SEE WAGE TABLE APPENDIX - I") and letter of understanding ("NOTE: SEE APPENDIX - II") but included neither document.

The Union sent the clean copy of the tentative contract to its members. It did *not* send a copy of the document to Linden or anyone else at the Employer.

On November 18, 2020, Skaggs notified the Employer that an electronic ratification vote would be held on November 30, 2020, and December 1, 2020. Skaggs testified that it is the Union's "standard" practice for membership to ratify a contract, but he did not believe it was a requirement in the Union's constitution or bylaws.[5]

On November 23, 2020, Skaggs emailed Linden requesting the health insurance premium rates for unit and non-unit employees. Linden responded the following day, November 24, 2020, with the health insurance premium costs for unit and non-unit employees.

On December 2, 2020, Skaggs reported that the electronic ratification vote resulted in a 50-50 tie, with only 36.6% of the eligible members participating.[6] He further notified Linden that the Union would be conducting a second ratification vote via mail ballot. Ballots were mailed to employees on December 3, 2020, with the count scheduled for December 18, 2020.

On December 17, 2020, Skaggs sent a letter via email to about 13 separate addresses, with a copy to Linden, stating that zero ballots had been returned to the Union's post office box and the ratification count would be postponed to December 24, 2020, in order to allow for more ballots to be received.[7]

On December 24, 2020, Skaggs informed Linden via email that its membership voted in favor of ratifying the collective-bargaining agreement. Linden replied the same day, "[w]e will need to put together the CBA with articles and table of contents," and inquired about vote tally. Skaggs did not immediately respond.

On December 28, 2020, Linden reiterated his email, writing "[w]ant to make sure you saw my email." Skaggs replied less than two hours later: "Yes please and lets [sic] just say it was very close." Linden then asked how many people voted and Skaggs responded that 15 ballots were returned.[8]

On January 4, 2021, Petitioner filed the instant decertification petition.

[5] Neither the Union's constitution nor its bylaws were introduced as evidence.

[6] Skaggs testified that "30 people had voted and it was a tie 15 and 15."

[7] Skaggs' testimony indicated that there may have been one ballot received by this date.

[8] Skaggs testified that the tally was eight yes and seven no.

Around January 15, 2021, the Employer issued paychecks for the pay period from December 27, 2020, to January 9, 2021 containing the agreed-to wage increases listed in the wage table of the tentative agreement.

III. BOARD LAW

The Board's contract-bar doctrine provides that once a contract is executed, no representation elections are permitted in the unit covered until the contract expires, up to a three-year limit. Representation petitions may be timely filed following the expiration of such contracts or during a 30-day "open period" between the 90th and the 60th day prior to their expiration date, or between the 90th and 120th day prior to the expiration date in healthcare institutions. To serve as a bar to an election, a contract must satisfy certain formal and substantive requirements. Specifically, the contract must be: (1) reduced to writing; (2) signed by all parties prior to the filing of the petition; (3) contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; (4) clearly encompass the employees involved in the petition; and (5) cover an appropriate bargaining unit. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1162-1164 (1958). The purpose behind the Board's contract-bar policy is to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Direct Press Modern Litho*, 328 NLRB 860, 860 (1999) (quoting *Appalachian Shale*, above at 1161 (1958)); see also *Union Fish Co.*, 156 NLRB 187, 191 (1965).

Only fixed-term contracts will serve as a bar to a petition and only for a "reasonable duration," which the Board has defined as up to three years. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962); see also *General Dynamics Corp.*, 175 NLRB 1035, 1036 (1969). The three-year period during which a contract is operative as a bar runs from its effective date, as opposed to its execution date. *Benjamin Franklin Paint Co.*, 124 NLRB 54 (1959).

The Board has consistently held the legality of a contract asserted as a bar is to be determined from the face of the contract itself and extrinsic evidence will not be admitted. *Jet-Pak Corp.*, 231 NLRB 552 (1977); see also *Union Fish*, supra at 191.[9] The Board's rationale for limiting extrinsic or parol evidence is that the terms of the agreement must be clear from its face so employees and outside unions may look to it to determine the appropriate time to file a representation petition. *South Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375, 375 (2005) (citing *Cooper Tire & Rubber Co.*, 181 NLRB 509 (1970)).

The burden of proving the existence of a contract bar is on the party or parties asserting the contract is a bar. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

[9] Extrinsic evidence may be taken in limited circumstances to determine when a contract was actually signed, *Jackson Terrace Associates*, 346 NLRB 180, 181 (2005) (citing *Road & Rail Services, Inc.*, 344 NLRB 388 (2005)), or if the condition precedent of ratification was satisfied. *Swift & Co.*, 213 NLRB 49, 50-51 (1974). Here, the contract was never actually signed and there was no ratification condition precedent.

IV. APPLICATION OF BOARD LAW TO THIS CASE

The Employer asserts the signed TAs fail to constitute a bar to processing the instant petition on several grounds: (1) missing substantial terms and conditions of employment, (2) lack of signatures, and (3) no fixed term (i.e. lacking an effective date and an expiration date). The Union maintains that the TAs were all signed by Linden and Anderson, either in person or electronically, the TAs constitute substantial terms and conditions, and the language indicates the contract was for a three-year agreement effective on ratification.

A. Substantial Terms and Conditions

The Board does not distinguish between new agreements, amendments, supplements, or extensions in applying its contract-bar rules so long as the document or documents purporting to be a collective-bargaining agreement contain substantial terms and conditions of employment. *Union Carbide Corp.*, 190 NLRB 191, 192 (1971) (citing *Santa Fe Trail Transportation Co.*, 139 NLRB 1513, 1514 (1962)). However, the Board does not require that an agreement delineate completely every single one of its provisions in order to qualify as a bar. *USM Corp.*, 256 NLRB 996, 999 fn. 18 (1981) (cases cited); see also *Jackson Terrace Associates*, 346 NLRB 180, 181 fn. 3 (2005) (finding contract bar where there parties signed agreement that contained all terms but wages and pensions which were specifically agreed to be submitted to interest arbitration).

First, the Employer contends that the Employer and Union had not agreed on the identity of the actual parties to the contract. In making this argument, the Employer points to the cover of the "clean copy" the Union sent to its members for ratification,[10] which states that the agreement is between Emergent Health Partners and International Association of EMTs and Paramedics, Local R7-919, NAGE-SEIU, while the certified bargaining representative is International Association of EMTs and Paramedics (IAEP), National Association of Government Employees (NAGE), SEIU Local 5000. However, as the Employer highlights elsewhere in its arguments, the clean copy was solely an internal Union document and never sent to the Employer for acceptance. All TAs exchanged by the parties were signed, either in-person or electronically, by Linden for the "Employer" and by Anderson for the "Union." Further, the Preamble indicates the agreement is between International Association of EMTs and Paramedics and Emergent Health Partners. The Employer's citation to *Crothall Hospital Services*, 270 NLRB 1420 (1984), and *Filtration Engineers, Inc.*, 98 NLRB 1210 (1952), are distinguishable. In both cases, those parties' contracts evinced a three-party agreement between the company, the international union, and the local union, where all three parties had signed the previous agreements. Here, per the plain language of the documents exchanged and accepted by the parties, there is no indication that signature or approval was necessary from any entity or individual (i.e. the International) other than the Union.

[10] Ratification of a contract for purposes of barring a petition is necessary only where it is a condition precedent. *Merico, Inc.*, 207 NLRB 101 (1973); *Appalachian Shale*, 121 NLRB at 1162-1163; *American Broadcasting Co.*, 114 NLRB 7, 7-8 (1956) (citing *Westinghouse Electric Corp.*, 111 NLRB 497, 498-500 (1955)). See also *Aramark Sports & Entertainment Services*, 327 NLRB 47, 47 fn. 4 (1998) (citing *Appalachian Shale*, 121 NLRB 1160; *Gate City Optical Co.*, 175 NLRB 1059, 1061 (1969)). Nothing in the record establishes such a condition here.

Second, the Employer argues the November 10, letter of understanding and dates of wage increases were open issues, as the Union never explicitly agreed to the former and the latter were never specified. While the evidence does not establish explicit agreement on those two issues, the record does indicate that there was at least a tacit agreement to incorporate those into the final agreement. Specifically, the Union created and submitted all of the TAs presented by the Employer to the membership for ratification, and the Employer applied the proposed wage increases to employees after the agreement was ratified. See generally, *Spartan Aircraft Company* 98 NLRB 73 (1952)(parties agreed specific wages would be negotiated at a later date); *Cooper Tank and Welding Corp.*, 328 NLRB 759 (1999)(evidence sufficient to show that agreement on wages reached even if not specified in language). As such, I believe the evidence is sufficient to demonstrate that the totality of the substantial terms and conditions were set. As such, I find the totality of the TAs constituted substantial terms and conditions of employment necessary to bar processing of the instant petition.

B. Signatures

Citing *Branch Cheese*, 307 NLRB 239, 240 (1992), the Employer argues that the parties' failure to prepare and execute a formal agreement forecloses a finding that the signed TAs constitute a bar to an election. While the Board in *Branch Cheese* noted the parties' intent to prepare and execute a formal document, the thrust of that case was that the record failed to establish which version of a contract the employees had ratified as part of the condition precedent to a final agreement. In fact, the Board has found a contract bar in numerous cases both before and after *Branch Cheese* where the parties had signed only informal documents despite their intent to prepare and execute a more formal contract. See, for example, *Pontiac Ceiling & Partition Co.*, 337 NLRB 120, 123 (2001); *St. Mary's Hospital & Medical Center*, 317 NLRB 89, 90 (1995); *Television Station WVTV*, 250 NLRB 198, 199 (1980); *USM Corp.*, 256 NLRB 996, 997 (1981). Thus, the failure to execute a formal document does not, by itself, prevent the TAs from acting as a bar to the instant petition. Furthermore, the Employer argues that the TAs are not valid because only Anderson signed them on behalf of the Union. This argument fails, however, as there is nothing in the record to suggest that parties ever contemplated anyone other than Anderson binding the Union or that Anderson was not authorized to do so on behalf of the Union.

More troublesome is the lack of a Union signature on the bundle of TAs sent by the Employer on November 10, 2020. The Board has held that "an exchange of emails can constitute a signed agreement that triggers the contract bar," including email signatures. *Inwood Material Terminal, LLC*, 29-RD-206581 fn. 1 (January 30, 2019) (unpublished); see also *Centers for New Horizons, Inc.*, 13-RD-143907 (March 19, 2015) (unpublished) (denying review of Regional Director's determination a contract bar existed based on the parties' email signatures). However, the record here reveals only that that the Employer sent the typewritten TAs, which did not contain signatures, to the Union. While the Employer's email contains Linden's signature, there is no evidence the Union replied to the email or otherwise indicated acceptance or signed. Further, the record contains only seven of 20 signed TAs.

As the record evidence fails to demonstrate that a significant portion of the TAs were signed by both parties, the evidence is insufficient to demonstrate that there was an effective contract that was signed by both parties.

C. Fixed Duration

In addition to the fact that the evidence failed to demonstrate that there were effective signatures, there is also an issue with the lack of a fixed duration for the documents that were purportedly agreed upon. Both an effective date and an expiration date are material terms that must be apparent from the documents purporting to be a contract in order to bar the processing of a petition. *South Mountain Healthcare*, 344 NLRB at 375, 376 fn. 3 (citing *Cind-R-Lite Co.*, 239 NLRB 1255, 1256 (1979); *Jet-Pak Corp.*, above at 552-553)). A contract which has no fixed term does not bar an election for any period. *Pacific Coast Assn. of Pulp & Paper Mfrs*., 121 NLRB 990, 993 (1958).

The Union argues the language of the parties' wage TA establishes the effective date and a three-year fixed term.[11] Specifically, the fact that there will be "immediate wage increases" indicates the effective date while a reference to "year three of the contract" delineates a three-year fixed term. Specifically, the Union contends that "immediate" means upon ratification. However, there are no references to ratification in the TAs and nothing in the parties' correspondence regarding the date or time when those wage increases would be implemented. While the "clean copy" the Union provided to its members indicates it is effective "upon ratification," this document was neither sent to nor signed by the Employer.

Without setting forth an explicit effective date for the contract, a petitioner or rival union cannot readily discern from the face of the documents the open period for timely filing a representation petition. In *South Mountain Healthcare*, supra, the Board declined to find a contract bar when the parties' memorandum of agreement contained at least four possible effective dates: the date the union signed the MOA, the date the employer signed the MOA, the effective dates of benefit contributions, and the effective date of the first wage increase. See also *Pennsylvania American Water Co.*, Case 06-RC-218527 fn. 1 (February 1, 2019) (unpublished) (finding no contact bar where parties' one-year contract extension "was ambiguous as to its effective date"). Similarly, in the instant case, there are at least two possible effective dates under the Union's argument—the date of ratification and the date the wage increase was implemented, which could be either the starting date of the pay period when the increase took place or the date when employees received the wage increase.

The Board's decision in *Cooper Tire & Rubber Co*., 181 NLRB 509 (1970) is distinguishable. In that case, the Board found a contract contained a fixed term when the cover listed the years of its duration, without reference to specific dates and the wage section provided for three annual progressions on September 1 of each year. In the instant case, the exchanged TAs contain no dates and no duration. The only document in the record with the potential to satisfy the Board's contract-bar requirements is the clean copy the Union provided to members,

[11] The TA reads, in relevant part:

> Wages: In year one of the contract. immediate wage increases to 50% of parity of the wage rates set forth in the six steps for non-union paramedic II, paramedic I, advanced EMT and EMT classifications as detailed in the non-union EHP EMT and paramedic wage scale information provided to the Union on October 21, 2020 and moving to 75% of parity of those wage rates at six months of year one of the contract; in year two of the contract moving to 100% of parity of those wage rates and steps, and 2 % increase in year three of the contract. …

but that document was never sent or agreed to by the Employer. There is nothing in the group of documents purported to comprise the contract that an outside party could reference to calculate the open period for filing a rival petition.

Accordingly, such ambiguity in effective duration of the agreement precludes finding the TAs constitute a contract that would serve as a bar under the Board's contract-bar doctrine.

V. CONCLUSION

For the reasons stated above, I have concluded that there is no contract bar to processing this petition.

Therefore, based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[12]

3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act (the Unit):

> Unit: All full-time and regular part-time Emergency Medical Technicians (EMTs) and Paramedics (EMT-Ps) employed by the Employer at its 330 Hamblin Ave., Battle Creek; 24 Wright Street, Coldwater; 118 N. Burr Oak Street, Mendon; 68834 Broadus St., Sturgis; 16975 US 12, White Pigeon; 12086 M89, Richland; Cassopolis and Sherwood (also known as Matteson Township substation), Michigan facilities; but excluding dispatchers, instructors, wheelchair drivers, administrative professionals, human resource employees, community relations employees, communications liaisons, scheduling

[12] The parties stipulated that the Employer, Emergent Health Partners, is a Michigan corporation engaged in emergency and non-emergency ambulance and medical transportation services and operates out of multiple locations throughout the State of Michigan, including facilities located in Battle Creek, Coldwater, Mendon, Sturgis, Cassopolis, White Pigeon, Richland, and Sherwood (also known as Matteson Township substation). During the fiscal year ending June 30, 2020, the Employer derived gross revenues in excess of $100,000 and purchased and received at its Michigan facilities, goods valued in excess of $50,000 directly from points outside the State of Michigan. While the stipulation specifically cites to gross revenues in excess of $100,000, the nonretail standard has been applied when services were provided directly to the consuming public but when the cost of those services were paid for by a commercial enterprise. *Bob's Ambulance Service,* 178 NLRB 1 (1969). Therefore, I rely on the parties' stipulation as it pertains to interstate commerce and the nonretail standard.

specialists, administrative assistants, office clerical employees, professional employees and guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Association of EMTs and Paramedics (IAEP), National Association of Government Employees (NAGE), SEIU Local 5000.

A. Election Details

The election will be conducted by mail.[13] The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 4:00 p.m. on **Friday, March 5, 2021**, by personnel of the National Labor Relations Board, Region 7. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote by mail and do not receive a ballot in the mail by **Tuesday, March 16, 2021**, should communicate immediately with the National Labor Relations Board by calling Board Agent Michael Madden at (616)930-9173 Election Specialist Callie Clyburn at (313) 335-8049, the Region 7 Office at (313) 226-3200, or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Voters should return their mail ballots so that they will be received in the National Labor Relations Board, Region 7 Regional Office by the close of business, 4:45 p.m. (EST) on **Friday, April 2, 2021**. All ballots will be commingled and counted at 1:00 p.m. (EST) on **Friday, April 9, 2021**. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots. The method for the count will be determined by the Regional Director and will require video participation.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the bi-weekly payroll period ending **February 7, 2021**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

[13] The parties stipulated to a mail-ballot election.

Ineligible to vote are 1) employees who have quit or been discharged for cause since the designated payroll period; 2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and 3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by February 19, 2021. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The list must also be served electronically on the other parties named in this decision.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, included in this Decision and Direction of Election, in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the

employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and, therefore, the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties

retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: February 17, 2021

Terry Morgan, Regional Director
National Labor Relations Board, Region 7
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